

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

SEP 12 2007


CLERK

WILDCAT MFG. CO. INCORPORATED
a Delaware Corporation

Civ. 07-4131

Plaintiff,

NOTICE OF REMOVAL

v.

DIESEL MACHINERY, INC.,
a South Dakota Corporation

Defendants.

COMES NOW Defendant, Diesel Machinery, Inc., ("DMI"), by and through the undersigned attorneys of record, and for its Notice of Removal pursuant to 28 U.S.C. §§ 1441 *et. seq.*, states in support of its Notice to the Court:

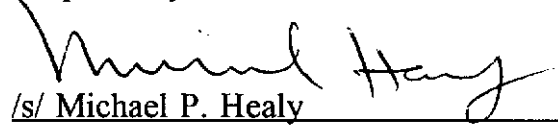
1. On or about August 23, 2007, the above-named plaintiff filed its Complaint for Declaratory Judgment in the Circuit Court, Second Judicial District, County of Minnehaha, South Dakota and is now pending therein.
2. DMI is the defendant in the above-entitled action.
3. On August 28, 2007, DMI was served with the Complaint for Declaratory Judgment in the above-entitled action. DMI has not yet responded to the Complaint.
4. The above-entitled action is a civil action seeking a declaration of rights and obligations created by application of South Dakota's Dealer Protection Act, SDCL

37-5-1 *et seq.* Wildcat Manufacturing manufactures various construction and industrial equipment for sale through dealers like DMI. DMI and Wildcat entered into a dealer franchise agreement whereby DMI was granted an exclusive right to sell Wildcat equipment in DMI's territory. Wildcat was purchased by a large corporation who asked DMI to sign a replacement Dealer Agreement that terminated DMI's exclusive territory and DMI refused.

5. This Court has jurisdiction of the above-entitled action pursuant to 28 U.S.C. §§ 1332, because plaintiff is a Delaware Corporation and defendant is a South Dakota corporation thereby creating complete diversity of citizenship. The value of the Wildcat franchise to DMI exceeds \$75,000.
6. Attached to this Notice is a copy of all process, pleadings and orders served upon Defendant DMI, in this action, which include:
 - a) A copy of the Summons is attached as Exhibit A;
 - b) A copy of the Complaint for Declaratory Judgment is attached as Exhibit B.

WHEREFORE, defendant DMI prays that the above-entitled cause now pending in the Circuit Court of Minnehaha, Second Judicial Court, be removed to the United States District Court for the District of South Dakota, Southern Division.

Respectfully Submitted,

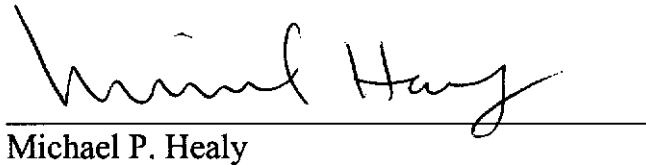


/s/ Michael P. Healy
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ATTORNEY FOR DMI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed by First Class U.S. Mail, postage prepaid, on September 11th, 2007, to:

Thomas K. Wilka
600 S. Main Avenue, Suite 102
P.O. Box 964
Sioux Falls, SD 57101-0964
ATTORNEYS FOR PLAINTIFF


Michael P. Healy